

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

James P. Moody, #266364, )  
 ) CIVIL ACTION NO. 9:10-2451-CMC-BM  
Plaintiff, )  
 )  
v. )  
 ) **REPORT AND RECOMMENDATION**  
South Carolina Department of Corrections; )  
Jon E. Ozmint, Director of SCDC, and )  
Captain Kenny Green, on day shift )  
at Evans Correctional Institution, in )  
their individual capacities and in their )  
official capacities, )  
 )  
Defendants. )  
\_\_\_\_\_ )

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983. Plaintiff, who was an inmate at the Evans Correctional Institution at the time this action was filed, alleges violations of his constitutional rights by the named Defendants.

This action was removed from state court by the Defendants, at which time an Order directing the Plaintiff to keep the Court advised of any change of address was mailed to Plaintiff on September 30, 2010. However, Plaintiff's copy of the Court's Order was returned to the Clerk of Court on October 8, 2010, with the envelope being marked "Released, Return to sender vacant unable to forward". Plaintiff has therefore failed to keep the Court (and apparently the Defendants) apprised of his address or whereabouts, and as a result neither the Court nor the Defendants have any means of contacting him concerning his case.

Therefore, it is recommended that this action be **dismissed, with prejudice**, in accordance with Rule 41(b), Fed.R.Civ.P. **The Clerk shall mail this Report and Recommendation to Plaintiff at his last known address. If the Plaintiff notifies the Court within the time set forth for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to vacate this Report and Recommendation and return this file to the undersigned for further handling.** If, however, no objections are filed, the Clerk shall forward this Report and Recommendation to the District Judge for disposition.

The parties are also referred to the Notice Page attached hereto.



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Bristow Marchant  
United States Magistrate Judge

October 27, 2010

Charleston, South Carolina



### Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 395  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).